

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Rulemaking to implement the provisions of  
Public Utilities Code § 761.3 enacted by  
Chapter 19 of the 2001-02 Second Extraordinary  
Legislative Session.

Rulemaking 02-11-039  
(Filed November 21, 2002)

**ASSIGNED COMMISSIONER AND  
ADMINISTRATIVE LAW JUDGES' RULING  
SETTING PREHEARING CONFERENCE**

This Ruling sets a prehearing conference (PHC) for 10:00 a.m., February 10, 2003. Parties may file and serve PHC Statements by February 6, 2003. Parties should come to the PHC prepared to address issues, schedule, applicability of Commission Rules, service list, and any other matter necessary for expeditious and efficient completion of this proceeding.

**1. Notice of PHC**

A PHC shall be held at 10:00 a.m., on February 10, 2003, in the Commission Courtroom, State Office Building, 505 Van Ness Avenue, San Francisco, California.

Parties who desire an expedited or daily transcript should advise the Chief Hearing Reporter by telephone at (415) 703-2288 no later than three days prior to the PHC. Questions regarding the date, time or place for the PHC should be directed to the Calendar Clerk at (415) 703-1203.

## **2. PHC Statements**

Respondents and parties filed and served preliminary responses and PHC Statements in December 2002, pursuant to the Order Instituting Rulemaking. (Rulemaking (R.) 02-11-039, Ordering Paragraphs 2 and 3.) Those responses and statements were very informative and useful in preparing this Ruling.

In advance of the PHC, parties may file and serve PHC Statements. (Rule 6.2 of the Commission's Rules of Practice and Procedure.) These PHC Statements may be pleadings from parties who did not file a statement in December 2002. For those who filed responses or statements in December 2002, these PHC Statements may incorporate, amend or replace prior responses and statements. Respondents and parties, however, need not and should not repeat prior responses and statements.

PHC Statements may address the schedule, issues,<sup>1</sup> and the applicability of Article 2.5 of the Commission's Rules of Practice and Procedure to this proceeding. (Rule 6.2.) They should also identify and discuss any other matter parties will seek to address at the PHC, and anything necessary for an expeditious and efficient completion of this proceeding, without repeating responses or comments already filed and served.

PHC Statements may also comment on proposals and matters stated in this Ruling, including issues, schedule and service list. Recommendations in PHC Statements and at the PHC should be as specific as possible. For example, parties should propose specific dates or timeframes, along with the exact

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<sup>1</sup> Parties need not address the substance of the issues in the PHC Statements, but may identify issues to be addressed in the Commission proceeding.

wording of issues as parties recommend the issues be stated in the Scoping Memo.

### **3. Service Lists**

A “temporary service list” was created following the December 20, 2002 meeting of the California Electricity Generation Facilities Standards Committee (Committee), and is available on the Commission’s web site. (Ruling dated December 10, 2002, Ordering Paragraph 6.) This service list is being used to support the work of the Committee. In particular, it is being used for the purpose of respondents and parties serving comments and reply comments on proposed maintenance standards.

The official service list for the Commission’s Rulemaking proceeding will be created by the Process Office and posted on the Commission’s web site after the first PHC. (R.02-11-039, Ordering Paragraph 5.) “Persons who want to become a ‘party’ to this proceeding shall appear at the PHC, or subsequent hearings, and fill out the ‘Notice of Party/Non-Party Status’ form (appearance form).” (*Id.*, page 8.) Respondents should also appear and complete an appearance form.

Parties should come to the PHC prepared to discuss the need for a special service list for Committee work. That is, parties may address whether or not the Commission should maintain, and parties should use, two service lists—one for the circulating of documents and pleadings as part of Committee work, and the other for the service of pleadings in the Commission’s Rulemaking proceeding.

Parties should also come to the PHC prepared to discuss the desirability of adopting a rule that service of pleadings in this proceeding for Commission-related matters shall be by electronic mail, without concurrent service of a paper copy. (Rule 2.3(b).) This would be similar to the procedure adopted for service

of comments on Committee-related work. (See Ruling dated December 10, 2002, Ordering Paragraph 5.) If adopted, however, this rule would not vacate the Commission's rules regarding filing of paper copies. (Rule 2.5.) Parties may also comment on whether or not service of a paper copy should be required on any party without an electronic mail address.

#### **4. Issues**

Parties should come to the PHC prepared to discuss whether or not the draft statement of issues in Attachment A is an accurate statement of issues to be addressed and decided by the Commission in this rulemaking proceeding. Parties should address whether or not these or other issues should be adopted in the Scoping Memo.

#### **5. Schedule**

Parties should come to the PHC prepared to discuss the schedule, including possible phases. For example, one approach is to conduct Commission work in three phases:

- Phase 1: Maintenance Standards;
- Phase 2: Logbook Requirements;  
Outage Protocol Enforcement
- Phase 3: Operations Standards;  
Private Generator Agreements (PGAs)

In this approach, Committee work includes notice and opportunity for public comment, followed by Committee adoption of Standards or Requirements. Immediately after--or in some cases perhaps concurrent with--Committee work, the Commission in this Rulemaking proceeding would consider implementation and enforcement standards, methods, tools, protocols, rules, procedures and practices.

The Committee need not adopt outage protocols (unless they are perhaps considered within the standards for operation and maintenance). The Commission, however, must enforce the protocols for the scheduling of outages of the Independent System Operator (ISO). In this case, the Commission might in Phase 2 move directly to consideration of enforcement of ISO outage protocols. Further, within Phase 3 the Commission might seek comment from parties regarding PGAs and the enforcement capabilities that might be sought from the Federal Energy Regulatory Commission (FERC).

A possible schedule for consideration and comment is contained in Attachment B. The Committee will set its own schedule. The Committee schedule stated in Attachment B includes estimated dates for the purpose of developing the timeframes for Commission work.

One option for the Commission decision(s) is to adopt a General Order (GO) that references the Standards and Requirements adopted by the Committee. The GO would specifically address Commission implementation and enforcement. The goal would be to have most of the substantive Committee and Commission work completed by July 1, 2003, for Commission implementation and enforcement during the 2003 Summer peak period.

The attached draft schedule does not contemplate evidentiary hearings, absent the grant of a motion for hearing. Rather, the record would be composed of all filed and served pleadings, and the Commission decision would be based on that record. The draft schedule includes opportunities for motions and responses regarding evidentiary hearing. If such motion is granted, the adopted

schedule would be adjusted accordingly at that time. Parties may wish to comment on this proposed approach.<sup>2</sup>

Parties have the right to present final oral argument (FOA) to the Commission in a quasi-legislative proceeding if the party makes the request within the time and manner specified in the scoping memo or later ruling. (Rule 8(d).) To accommodate this right, the draft schedule includes dates for the filing and service of motions and responses for FOA and, if adopted, these dates would be included in the schedule adopted in the Scoping Memo. Parties may wish to comment on this approach.<sup>3</sup>

## **6. Other Generators**

Reliant, Mirant, and others state that there are other electric generating facilities in California that fall within the scope of Public Utilities Code Section 761.3 but the owners of those facilities are not named as respondents. Reliant, Mirant, and any other party with information regarding those facilities should assist the Commission in identifying those owners.

### **IT IS RULED** that:

1. A prehearing conference (PHC) shall be held at 10:00 a.m., on February 10, 2003, in the Commission Courtroom, State Office Building, 505 Van Ness Avenue, San Francisco, California. Respondents and parties shall appear at the PHC and submit appearance forms to the Administrative Law Judge. The official service list for this proceeding shall be prepared based on appearances at

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<sup>2</sup> For examples of this approach, see (a) Phase 2 Scoping Memo dated September 21, 2001 in R.00-10-002 and (b) Scoping Memo dated July 17, 2002 in Investigation 02-04-026. These are available on the Commission's web site at: [www.cpuc.ca.gov](http://www.cpuc.ca.gov).

<sup>3</sup> For examples of this approach, see Scoping Memos identified in the prior footnote.

the PHC, and shall be posted by the Commission's Process Office on the Commission's web site reasonably soon after the PHC.

2. Respondents and parties may file and serve PHC statements. PHC Statements shall be filed and served by February 6, 2003. Service shall be performed by electronic mail using the electronic mail addresses on the Commission's web page, with service of a paper copy limited to persons without an electronic mail address. Statements need not, and should not, repeat comments made in responses and statements filed in December 2002.

3. Respondents and parties shall come to the PHC prepared to discuss issues, phases, schedule, service list, applicability of Commission Rules, and any other matter necessary for expeditious and efficient completion of this proceeding.

4. Any respondent or party with information regarding an electric generating facility in California subject to Public Utilities Code Section 763.1 whose owner is (or owners are) not named as respondents in Rulemaking 02-11-039 shall file and serve a document which states the name, address and other known relevant information to assist the Commission identify each such facility and owner(s). That information shall be included either in the PHC Statement or another document filed and served by February 6, 2003.

Dated January 31, 2003, at San Francisco, California.

/s/ CARL WOOD

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Carl Wood  
Assigned Commissioner

/s/ JOHN E. THORSON

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John E. Thorson  
Administrative Law Judge

/s/ BURTON W. MATTSON

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Burton W. Mattson  
Administrative Law Judge



**ATTACHMENT A**

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**DRAFT STATEMENT OF ISSUES**

1. Maintenance and Operation: The Commission “shall implement and enforce standards adopted... [by the California Electricity Generation Facilities Standards Committee] for the maintenance and operation of facilities for the generation of electric energy owned by an electrical corporation or located in the state to ensure their reliable operation.” (§ 761.3(a).)
  - 1.1. How should the Commission implement such standards (e.g., by adoption of a General Order; by incorporation in California Independent System Operator tariffs; by another method)?
  - 1.2. How should the Commission enforce such standards (e.g., by the filing of reports; by customer or competitor complaint; by staff-initiated enforcement; by delegated enforcement authority to staff; by other means)?
  - 1.3. Does, or should, implementation and enforcement vary depending upon whether or not the electrical corporation or facility located in the state is or is not a public utility?
2. Scheduled Outages: The Commission “shall enforce the protocols for the scheduling of powerplant outages of the Independent System Operator.” (§ 761.3(a).)
  - 2.1. What process should be used to determine whether or not outage scheduling protocols of the ISO are being followed?
  - 2.2. What enforcement tools should be used to enforce the ISO protocols for the scheduling of powerplant outages?

**ATTACHMENT A**

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3. Enforcement Capability: “The Legislature finds and declares...it is in the public interest that the Public Utilities Commission seek enforcement capability from the Federal Energy Regulatory Commission regarding the private generator agreement [sic] to provide for broader state control of operational activities of generation facilities in the state.” (Section 1(c) of SB X2 39, Chapter 19, April 26, 2002.)
  - 3.1. What types of private generator agreements are there, and what types should be addressed in the state seeking broader state control of operational activities of generation facilities?
  - 3.2. What enforcement capabilities should the Commission seek from the FERC?
4. Ensuring Facilities Remain Available and Operational: “In proceedings pursuant to Section 455.5, 851, or 854, the commission shall ensure that facilities...remain available and operational...” (§ 362(a).) “The commission shall require that generation facilities located in the state that have been disposed of in proceedings pursuant to Section 851, are operated...in a manner that ensures their availability to maintain the reliability of the electric supply system.” (§ 362(b).)
  - 4.1 Beyond implementation and enforcement of Committee-adopted operation and maintenance standards and enforcement of ISO outage protocols, what methods should the Commission employ, or what rules or requirements should the Commission adopt, to ensure that facilities remain available and operational, and are operated in a manner that ensures their availability to maintain system reliability, in conjunction with proceeding pursuant to Section 455.5, 851, or 854?

**(END OF ATTACHMENT A)**

**ATTACHMENT B****Page 1****R.02-11-039****PROPOSED SCHEDULE**

Assumes No Evidentiary Hearings

<b>Item</b>	<b>Phase 1 (Maintenance)</b>	<b>Phase 2 (Logbook; Outage)</b>	<b>Phase 3 (Operations; PGAs)</b>
Proposal	12/20/02	2/3/03	[1]
Workshop	--	--	
Comments	1/17/03	2/24	
Reply Comments	1/21	3/3	
Committee Meeting to Discuss	1/24	3/17	
Committee Meeting to Adopt	2/3	3/17 [2]	
PHC Statements	2/6	2/6	2/6
PHC	2/10	2/10	2/10
Scoping Memo	By 2/26	By 2/26	By 2/26
Comments and Proposals from Parties on PUC Implementation and Enforcement	+15 days from 2/3 (i.e., 2/18)	3/10 [3]	
Reply Comments; Motions for Evidentiary Hearing (EH)	+ 5 days (2/24)	3/21	
Responses to motions for EH	+ 4 days (2/28)	3/26	
Hearing before ALJ [4]	3/7	--	--
Proposed Decision (PD)	+18 days (3/18)	4/22	
Comments on PD; Motions for Final Oral Argument (FOA)	+20 days (4/7)	5/12	
Responses to Motions for FOA	+2 days (4/9)	5/14	
Reply Comments on PD; FOA	+ 5 days (4/14)	5/19	
Commission Decision	+5 days (4/17/03)	5/22/03	

**ATTACHMENT B**

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[1] Committee Staff Director Richard Clark has already requested that utilities submit documents showing the operations standards now in use at power plants. It is possible that the Committee will direct staff to prepare proposed operations standards from these data responses. The Committee may also direct that the Staff proposal be the subject of a workshop, plus written comments and reply comments from parties, before being considered for adoption by the Committee.

[2] Adoption of Final Logbook Requirements.

[3] Comments and proposals on implementation and enforcement of both (a) logbook requirements and (b) ISO outage protocols.

[4] Informational (non-evidentiary) hearing before the Administrative Law Judge to hear from parties on proposals, comments and replies. This hearing may be postponed or held as an additional PHC in the event a motion for evidentiary hearing is made and granted.

**(END OF ATTACHMENT B)**

**CERTIFICATE OF SERVICE**

I certify that I have by mail, and by electronic mail, to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Assigned Commissioner and Administrative Law Judges' Ruling Setting Prehearing Conference on all parties of record in this proceeding or their attorneys of record.

Dated January 31, 2003, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at

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(415) 703-2074 or TTY# 1-866-836-7825 or (415) 703-5282  
at least three working days in advance of the event.